Four illustrations (to s 16) are given. These are to be taken as part of the statute.

We also considered the totality of the two sentences which is 14 years. In this, we were following the words of the Lord Chief Justice of England in *R* v *Faulkner*[2] at p 596 where he said, 'However, at the end of the day, as one always must, one looks at the totality and asks whether it was too much'.

We asked ourselves this question and felt that having regard to all the facts of the case as referred to by us, the totality of 14 years was not 'too much' and in our view, entirely appropriate. Our order was that the sentences were to run from the date of arrest of the accused, 22 March 1985.

Order accordingly.

Solicitors: *Isaac & Puva.*

Reported by *Terence Tan Bian Chye*

Lawrence Kwek Juan Bok v Lim Han Yong

HIGH COURT (SINGAPORE) - SUIT NO 402 OF 1989
CHAN SEK KEONG J
13 JUNE 1989

Civil Procedure - Interlocutory injunction to restrain defamatory statements - Whether English authorities decided in context of jury trials applicable in Singapore

Tort - Libel - Interlocutory injunction sought to restrain libel - Defence of justification

Constitutional Law - Freedom of speech - Effect on interlocutory injunction to restrain libel where justification pleaded

Equity - Equitable jurisdiction of court to grant interlocutory injunctions - Civil Law Act (Cap 42, 1985 Ed), s 3(a) - Common Law Procedure Act 1854

The present action was commenced by the plaintiff against the defendant for damages for libel after the defendant had sent a writ endorsed with a statement of claim in Suit No 199 of 1989 ('the statement') (in which the present plaintiff was the defendant) to a government servant. The plaintiff also applied for an interlocutory injunction to restrain the defendant from publishing further the alleged libel. The defendant had denied that the allegations in the statement of claim are defamatory, but that if they are, they are true in substance and in fact. The defences of qualified privileged and fair comment were also pleaded. The defendant also maintained that he published the statement without malice as he thought that he was entitled to do so on the ground that the court documents are public documents. The sole issue before the court here was whether the plaintiff was entitled to an interlocutory injunction to restrain the defendant from publishing a libel where the defendant has pleaded justification by way of defence. The plaintiff conceded that the English authorities were against him but submitted that the cases were decided in the context of a jury trial and were thus not applicable in Singapore.

Held, dismissing the application:

(1) The court has in the exercise of its equitable jurisdiction or under s 3(a), Civil Law Act, the power to grant interlocutory injunctions to restrain the publication of defamatory statements.

(2) This jurisdiction will only be exercised sparingly. In England, two reasons for this approach were that first, it is the function of the jury to decide if the words complained of were defamatory, and it is not the judge's duty to so decide; second, the public interest is in seeing that free speech should be unfettered.

(3) There was neither principle nor authority to suggest that the absence of a jury affects the rationale of the first reason. Like a jury, a judge is in no position to say whether the defence has been established until he has heard all the evidence.

(4) Even if the jury point had some merit, the public interest in maintaining the right of free speech is in itself sufficient reason to justify the detail of a prior restraint where the defendant intends to justify the truth of his statements.

(5) The plaintiff has not made out a case for not following the English authorities. In addition, in Singapore, where freedom of speech was a constitutional liberty, the case for applying the English principles is even stronger.

Cases referred to

1 *Bonnard* v *Perryman* [1891] 2 ChD 269 (folld)
2 *Datuk Syed Kechik* v *Dato Yeh* [1971] 1 MLJ 56 (distd)
3 *American Cyanamid* v *Ethicon Ltd* [1975] AC 396
4 *New Straits Times* v *Airasia Bhd* [1987] 1 MLJ 36 (refd)
5 *Herbage* v *Times Newspapers* The Times, 1 May 1981 (CA)
6 *Bestoball Paints Ltd* v *Bigg* [1975] FLR 421 (folld)

Legislation referred to

Civil Law Act (Cap 43, 1988 Ed) s 3(a)

Harry Elias and *Ng Su-Ran (Miss)* for the plaintiff.
Rama L Kasi for the defendant.

Cur Adv Vult

Chan Sek Keong J: This is an application by LKJB (the plaintiff) for an interlocutory injunction to restrain LHY (the defendant) whether by himself or his servants or agents from further publishing an alleged libel, that is to say, the words set out in the statement of claim in Suit No 199 of 1989 or words to the like effect. The statement of claim of 11 paragraphs set out a number of allegations by LHY (the plaintiff in that action) that LKJB (the defendant in that action) had induced LHY to invest in a company called Sunrean Natorny Goods Pte Ltd and to become its managing director (and thereby to give up alternative employment) and that in so doing had acted negligently or had misrepresented to LHY fraudulently the economic prospects of the said company as a result of which LHY has suffered loss. LKJB has filed a defence

and counterclaim in Suit No 199 of 1989 denying the allegations of LHY and counterclaiming the sum of $50,000 being the unpaid consideration for the 50,000 shares in the company which LKJB has sold to LHY.

The present action was commenced by LKJB against LHY on 1 March 1989 for, inter alia, damages for libel after LHY had on or about 16 February 1989 sent a copy of the writ endorsed with the statement of claim in Suit No 199 of 1989 to the Head of Employment Service Department, Ministry of Labour. The publication of the statement of claim after its filing is not denied by LHY. He has however maintained that he did not do it with malice as he thought that he was entitled to do so on the ground that court documents are public documents. He has also filed a defence in this action in which he maintains that the allegations in the statement of claim are not capable of being and are not defamatory of LKJB, but that if they are, they are true in substance and in fact. Qualified privilege and fair comment have also been pleaded in the defence. Apart from the defence, it should also be noted that the statement of claim in Suit No 199 of 1989 is in itself an assertion that the matters alleged therein are true as they form the basis of LHY's action against LKJB. The application before me has been argued on one point only, that is whether the plaintiff is entitled to an interloctory injunction to restrain the defendant from publishing the alleged libellous statements when the defendant has pleaded justification by way of defence.

Counsel for LKJB concedes that the English authorities on the point beginning with the decision of the Court of Appeal in *Bonnard* v *Perryman*[1] are against him. However, he submits that a Singapore court should not follow these authorities as they were decided in the context of jury trials in which there is a separation of functions between judge and jury, a situation which does not obtain in Singapore. He refers to the case of *Datuk Syed Kecik* v *Dato Yeh*[2] to show that the High Court in Malaysia, where defamation actions are now tried by juries, has granted an interloctory injunction on the balance of convenience (applying the principles laid down in *American Cyanamid*)[3] where justification was pleaded as a defence. A careful reading of the judgment in that case shows, however, that the judge found that the argument based on justification was designed to delay the proceedings, no affidavit having been filed to raise the defence, and that the purported justification of the innuendo was not tenable. In other words, there was in substance either no or insufficient plea of justification. It should however be noted that if this case decided what counsel for LKJB has submitted that it decided, it would no longer stand against the latter decision of *The New Straits Times Press* v *Airasia Bhd*[4] where the Supreme Court of Malaysia approved and applied the established principle that no interlocutory injunction would be granted in a libel action where justification is pleaded. In neither of these cases was it argued or considered that the absence of a jury was a relevant factor.

It is not doubted that this court has, in the exercise of its equitable jurisdiction or under s 3(a) of the Civil Law Act (Cap 43) (which is a re-enactment of the Common Law Procedure Act 1854), the power to grant interim injunctions to restrain the publication or repetition of defamatory statements. But, if the English authorities are applicable to Singapore, then the jurisdiction will be exercised sparingly and only in clear cases. In England, two reasons have been advanced by the courts to justify this cautious approach. The first is founded on the separation of the functions of judge and jury in a defamation trial where it is the function of the jury and not the judge to find whether the words complained of, assuming that they are capable of bearing a defamatory meaning, are in fact defamatory of the plaintiff. It therefore follows that except in cases where the words complained of are clearly defamatory, in the sense that any finding by the jury to the contrary will be reversed on appeal, a judge will not grant an interim injunction to restrain the publication or repetition of the words complained of where it is arguable that they may not be defamatory of the plaintiff. The second reason is based on the public interest that the right of free speech should not be unfettered: see *Herbage* v *Times Newspapers.*[5] Where a plaintiff seeks the prior restraint of the publication by the defendant of words which are alleged to be defamatory of him, the court is not merely concerned with the direct and immediate interests of the parties to the action. Otherwise, injunctions would be granted as a matter of course as it is seldom that the defendant can show that he has an interest in immediate publication which overrides the interest of the plaintiff not to be injured by the publication. The court is also concerned with the public interest in upholding the right of free speech. As Coleridge CJ said at p 284 in *Bonnard* v *Perryman*,[1] where justification was pleaded:

> ... it is obvious that the subject matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.

In England, therefore, the grant of an interim injunction in such circumstances is not only an usurpation of the function of the jury but against the public interest that the right to speak the truth be unfettered.

In my view, there is neither principle nor authority to suggest that the absence of a jury in a defamation trial affects the rationale of the established principle. In such a situation, the judge assumes the role of the jury in determining whether the words used are defamatory or, where justification is pleaded, whether the defendant has made out such a defence. But, until the action is tried, the judge is in exactly the same position as a jury, in a trial where there is a jury. Like a jury, a judge is also in no position to say whether the defence has been established until he has heard all the evidence. But, even assuming that the jury point has some merit, the public interest in maintaining the right of free speech is in itself a sufficient reason to justify the denial of prior restraint where the defendant intends to justify the truth of his statements: see Oliver J in *Bestobell Paints Limited* v *Bigg*[6] at p 430 et seq. The plaintiff has not made out a case for this court not to follow the English authorities. I should add that where, as is the case of Singapore, freedom of speech is a constitutional liberty, the case for applying the principle established by the English courts in such a case is a fortiori. The application is dismissed with costs.

Application dismissed.

Solicitors: *Harry Elias & Partners; Chow Peng & Partners; WT Woon & Co.*

Reported by *Terence Tan Bian Chye*

Michael Raymond Taylor v Public Prosecutor

HIGH COURT (SINGAPORE) - MAGISTRATE'S APPEAL NO 33 OF 1988
CHUA J
27 APRIL 1989

Criminal Procedure - Bail - Whether magistrate has power to set bail for person who 'appears' in obedience to a summons - Person not under arrest - Companies Act (Cap 50, 1985 Ed), s 402(1)(c) - Criminal Procedure Code (Cap 68, 1985 Ed), ss 54(b) & 351(1), (2), Sch A, Form 1 of Sch B - Criminal Procedure Code [India], ss 437 & 438(1)

Words and Phrases - 'Appears before a court' - Criminal Procedure Code (Cap 68, 1985 Ed), s 351(1)

The appellant was served with a summons requiring him to attend court to answer charges under the Companies Act. On the return date of the summons, when he appeared before a magistrate, the proceedings were adjourned and the appellant was released on bail of $150,000 in one surety. The appellant appealed against the magistrate's order requiring him to furnish bail. His main contention was that the magistrate had no power to make such an order. The appellant argued that as he had appeared in court in obedience to the summons, he does not come within any category of persons set out in s 351 of the Criminal Procedure Code ('CPC') who is to be released on bail by the court. Only after he has failed to appear that the magistrate may issue a warrant for his arrest and may endorse on the warrant a direction regarding the furnishing of bail. The appellant conceded that the magistrate was right in holding that s 402(1) of the Companies Act creates a bailable offence but submits that he was wrong in holding that s 351 of the CPC applied.

Held, dismissing the appeal:

(1) The magistrate is correct in his view that a person who is served with a summons and in obedience thereto 'appears' in court is within the meaning of s 351 of the CPC.

(2) This construction is supported by a reading of the form of the summons, Form 1 of Sch B, where the words used are 'You are required to appear'. Judicial interpretation supports the magistrate's view that 'appears' means 'appears in answer to a summons'.

(3) Appearing before a court in obedience to a process of the court constitutes a form of restraint since his liberties are no longer unfettered. A person who 'appears' before a court in obedience to a summons surrenders himself to the custody of the court.

(4) There is no express requirement that an arrest is a precondition for bail in bailable offences. No reliance can be placed on the dicta of Indian cases that assume such a requirement, especially since those cases dealt with a provision which is not found in our CPC.

(5) If it was intended that s 351 should apply to bailable offences where arrest had been effected prior to a person's court appearance, then the legislature would not have employed the disjunctive word 'or'. The magistrate noted this and was correct in his construction of the section.

(6) The magistrate has to exercise his discretion judicially. He has properly done so in requiring bail of $150,000 as the charge was a grave one. It concerned furnishing misleading statements to the Securities industry Council with intent to deceive. In addition, the appellant was not a local citizen.

Cases referred to

1 *Ram Chandra* v *State of Uttar Pradesh* [1977] Cri LJ 1783 (refd)
2 *The State* v *Santokh Singh* AIR 1960 Punjab 31 (follid)
3 *R* v *Tottenham Juvenile Court* [1982] 2 All ER 321 (follid)
4 *Bhramar* v *State of Orissa* [1981] Cri LJ 1057 (follid)
5 *State* v *Dallu Punja* [1954] Cri LJ 1052 (follid)
6 *PP* v *Manikya Rao* AIR 1959 Andra Pradesh 639 (refd)
7 *Niranjan Singh* v *Prabhakar Rajaram* AIR 1980 SC 785 (refd)
8 *State of Uttar Pradesh* v *Kailash* AIR 1955 Allahabad 98 (follid)
9 *State of Gujarat* v *Govindal* AIR 1966 Gujarat 146 (follid)

Legislation referred to

Companies Act (Cap 50, 1985 Ed) s 402(1)(c)
Criminal Procedure Code (Cap 68, 1985 Ed) ss 54(b), 351(1), (2), Sch A, Form 1 of Sch B
Criminal Procedure Code [India] ss 437, 438(1)

Warren Khoo (*Tan May Tee* (*Miss*) with him) for the appellant.
John Koh and *Rosalind Lazar* (*Miss*) for the respondent.

Cur Adv Vult